THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13055 of 2001

02.8.2007

Between:

Sadaram Sanjeevi Rao, S/o.late Appa Rao

… Petitioner

AND

The Commissioner, Appeal/Chief Commissioner of Land Administration,
Government of Andhra Pradesh, Hyderabad
And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13055 of 2005

ORDER:

The petitioner and his father, Appa Rao, jointly owned urban properties in Visakhapatnam Urban Agglomeration. They filed separate declarations under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity). Petitioner was declared surplus holder to the extent of 1735 Sq.mts. While their declarations were under process, a suit being O.S.No.21 of 1982 was filed on the file of the Court of the Additional Subordinate Judge, Visakhapatnam, for partition of property between the petitioner and his father. The same was decreed on 15.9.1982 presumably as per compromise and the petitioner was allotted the urban properties situated/comprised in T.S.No./Door No.2A/1114/B1 and 611 (patta No.92). The petitioner then submitted affidavit before the second respondent. The petitioner alleges that without considering the same and without issuing draft statement under Section 8(1) of the Act, second respondent issued final statement under Section 9 of the Act on 12.6.2000. Allegedly the proceedings under Section 8(4) of the Act were not served on the petitioner. Aggrieved by the final statement under Section 9 of the Act, petitioner preferred appeal under Section 33 of the Act before the first respondent, who dismissed the same on 18.4.2005. The said order is challenged in this writ petition.

Learned Counsel for the petitioner submits that as required under law, second respondent has to send the draft statement under Section 8(1) of the Act along with notice under Section 8(3), give time to declarant to file objections and after considering the objections, he has to pass necessary orders under Section 8(4) of the Act and then only final statement under Section 9(1) of the Act can be issued. He would

urge that the entire proceedings are vitiated due to non-compliance with the mandatory provisions of the Act.

Learned Assistant Government Pleader for Revenue (ULC), after taking this Court through the impugned order passed by the first respondent, submits that the first appellate authority verified the records and found that final orders were issued by the original authority and that no interference is called for.

While dismissing the appeal, first appellate authority considered the question whether adequate opportunity was given to the declarant, it was noticed that second respondent gave an opportunity for the petitioner to appear on 19.9.1998, 20.12.1998 and 29.12.1998, but he failed to appear either in person or through counsel. After saying so, first respondent observed as under.

> It is evident from the record that Competent Authority has issued final order under Section 8(4) of the act on 02.2.2000 and dispatch to the declarant on 08.2.2000. After passing of Section 8(4) orders only the Competent Authority issued final statement under Section 9 of the Act on 12.6.2000. Hence the plea the final statement issued is contrary to provisions of the ULC Act 1976 is not acceptable. It is a fact that provisions of ULC Act are applicable to vacant land but not to the properties covered by structures existing on the date of the Act. The declarant has not produced any documentary evidence before the Competent Authority to the effect that the structures claimed were constructed before the commencement of the Act. The appellant has filed Xerox copies of certain documents such as encumbrance certificates/House tax receipts to show existence of structures on the properties. The encumbrance certificates are not the relevant documents and the tax receipts relates to the period subsequent to the commencement of the Act. Had the assessment been genuine, the appellant could have been issued as and when the structures were raised and tax should have been paid during the relevant years. Hence the plea that structures constructed prior to Act cannot be accepted.

As seen from the appellate order, petitioner was given adequate opportunity and submission of the learned Counsel for the petitioner that without passing final order under Section 8(4) of the Act, statement under Section 9 of the Act was issued cannot be accepted.

The writ petition, for the above reasons, is misconceived and is accordingly dismissed. No costs.

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(**V.V.S.RAO,J**)

August 02, 2007.
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